

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Wednesday, the 29th day of June, 2022

I.A.No. 5/2022 in I.A.No.2/2021

in

O.S. No. 18/2021

Kumar

...Petitioner/ Defendant

-vs-

Rathina Mudaliar

...Respondent/ Plaintiff

This petition coming up before me on 16.06.2022 for final hearing in the presence of, Thiru.R.E.Charles, counsel for the Petitioner/ Defendant and Thiru.B.Rajesh, counsel for Respondent/Plaintiff and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioner/Defendant under Section 151 of CPC to reopen the I.A.No.2/2021 which was closed on 09.08.2021 in the above suit and to receive the counter.

2.The averments stated in the petition in brief:

The above suit was filed by the Respondent/Plaintiff for Mandatory

Injunction and permanent injunction. The above I.A. was posted for counter on 09.08.2021. Since the Petitioner/Defendant was suffering from fever and he could not meet his counsel, he has not filed the counter and therefore he was set exparte. Since the main case was posted for exparte evidence, the above I.A. was closed. The Petitioner/Defendant has filed the counter along with the petition and he has got good case on merits. Hence the petition.

3. The averments stated in the objection filed by the Respondent/ Plaintiff in brief:

This petition is vexatious and not maintainable both in law and as well on facts. The Respondent/Plaintiff had filed the petition to appoint an Advocate Commissioner to note down the physical features and to measure the suit property along with qualified surveyor and the same was allowed and the Advocate Commissioner was not able to measure the suit property due to bushes hiding the survey stone. The report of the Advocate Commissioner alone can resolve the dispute between the Petitioner/Defendant and the Respondent/Plaintiff. Therefore this petition is filed to drag on the proceedings, without any bonafide reasons and evidence. Hence this petition to be dismissed with cost.

4. The point for determination is whether this petition is to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides

6. Heard both sides and perused the records.

7. The Petitioner has filed this petition to reopen the Interim Injunction application in I.A.No.2/2021 in the above suit. The Respondent/Plaintiff had resisted the petition on the ground that the Advocate Commissioner has been appointed to inspect the suit property with regard to the encroachment and the suit will be disposed of immediately when the Advocate Commissioner file his report and that this petition is filed vexatiously to drag on the proceedings without any bonafide reasons.

8. Perusal of records, reveal that the interim application in I.A.No.2/2021 was closed for the reason that the main suit is posted for exparte evidence. The petitioner/defendant had filed in I.A.No.4/2022 to set-aside the order setting him exparte in the above suit and the Respondent/Plaintiff counsel endorsed no counter and the same was allowed and the written statement of the Petitioner/defendant was taken on file and the suit is pending for the report of the Advocate Commissioner. The petitioner/defendant had filed the Counter for the petition in I.A.No.2/2021. Since the order setting him exparte in the above suit, was set-aside, this court is of the opinion that in the interest of justice, the petitioner/defendant be given an opportunity to contest this petition. Hence for the forgoing reasons this court is inclined to allow this petition.

9. In the result, this petition is allowed. No costs.

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Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 29th day of June, 2022

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam

Draft/Fair/Order

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D.D.: 29.06.2022

DMC, MKM.

